

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
January 28, 2019 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Paul Keller, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, and Molly Barnhill, Assistant Director

MEMBERS ABSENT: None

Mrs. Barnhill stated the first order of business was to elect a chairman for the Board of Zoning Appeals to serve for 2019. She asked if there was a motion.

Mike Winge nominated Jeff Valiant. Doris Horn seconded the nomination.

Being no other nominations Mrs. Barnhill called for a motion to close.

Mike Moesner voted to close the nomination and elect Jeff Valiant by acclamation and carried unanimously.

Chairman Valiant stated the next order on the agenda was to elect a Vice-Chairman for 2019.

Mike Winge made a motion to elect Terry Dayvolt as Vice Chairman. The motion was seconded by Jeff Willis.

Mike Moesner made a motion the nominations be closed and elect Terry Dayvolt by acclamation and carried unanimously.

SET MEETING TIMES AND PLACES:

The Chairman stated the next item on the agenda was to set the meeting dates, time, and place for 2019. He said the meetings as usual would be held on the fourth Monday at 6:00 pm in this room except for May, which was switched to the fourth Tuesday due to the holiday and he believed there would be some question to December's being on the 23rd. He asked the Board if they wanted to back it up a week so that it would be on the 16th.

Doris Horn stated it didn't matter to her.

Mike Moesner stated that was fine.

Chairman Valiant stated so the 16th. He asked Mrs. Barnhill if that worked for her.

Mrs. Barnhill replied whatever date worked for the Board.

Chairman Valiant asked Morrie if the 16th worked for him.

Attorney Doll replied it absolutely did. He said they could do it the night before Christmas Eve if the Board wished; it just seemed to him that probably wouldn't be very functional.

Chairman Valiant asked if the wishes of the Board were to keep it on the 23rd or back it up to the 16th.

Multiple answers from the Board for the 16th.

Chairman Valiant called for a motion to approve the dates with the May and December changes.

Mike Winge made a motion to approve the dates and times with the changes on the dates for May and December.

The motion was seconded by Doris Horn and carried unanimously.

Attorney Doll stated December 16th at 6:00 pm.

Chairman Valiant replied yes, they would keep the same time.

ADOPTION OF RULES AND REGULATIONS:

Chairman Valiant stated the next item on the agenda was to adopt the Rules and Regulations for 2019. He said he didn't think there were any changes for this year.

Mrs. Barnhill asked that the Board adopt them as is for now, they haven't changed since last year but they did plan to make some changes before the next meeting.

Attorney Doll stated they would be bringing the Board an amendment.

Chairman Valiant asked for a motion.

Jeff Willis made a motion to approve the Rules and Regulations the way they are.

The motion was seconded by Paul Keller and unanimously approved.

MINUTES:

Chairman Valiant called motions to approve the minutes from November 13, 2018, November 26, 2018, and December 17, 2018.

Doris Horn made a motion to approve the minutes for the Special Meeting on November 13, 2018 as circulated.

The motion was seconded by Terry Dayvolt and approved unanimously.

Doris Horn made a motion to approve the minutes for the regular meeting on November 26, 2018 as circulated.

The motion was seconded by Terry Dayvolt and approved unanimously.

Doris Horn made a motion to approve the minutes for the regular meeting on December 17, 2018 as circulated.

The motion was seconded by Terry Dayvolt and approved unanimously.

SPECIAL USES:

BZA-SU-19-01

APPLICANT: New Cingular Wireless PCS, LLC d/b/a AT&T Mobility by Pike Legal Group, David Pike, Attorney

OWNER: The Forler Family Revocable Living Trust by Pike Legal Group, Limited Power of Attorney, David Pike, Attorney

PREMISES AFFECTED: Property located on the west side of Polk Road approximately 15 feet northwest of the intersection formed by Polk Road and Forest Lake Dr. 56.7 acres Skelton Twp. 17-5-7 3533 Polk Rd

NATURE OF CASE: Applicant requests a Special Use, SU 18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 199-foot tall wireless communication tower (195' monopole with 4' arrestor) within a 100'x100' lease area in an "A" Agricultural Zoning District. *Complete legal on file (Advertised in The Standard January 17, 2019)*

Robert Grant, Attorney for AT&T the applicant, was present.

Chairman Valiant called for a staff report.

Mrs. Barnhill stated we had all of the return receipts. She said the existing land use was vacant, it was a field. She stated the surrounding zoning and land use to the north is zoned "CON" Recreation and Conservancy with some single-family dwellings. She said to the south, east, and west are all either vacant or single-family dwellings in an "A" Agricultural Zoning District. She stated there was no flood plain. She said they had filed a Commercial Driveway Permit and would have to post a letter of credit or construct the driveway prior to permits being issued. She

stated the proposed tower would be a monopole tower, 195' tall with a 4' lightening arrestor. She said there was not an existing tower or structure that could accommodate the area to be covered by the proposed tower within one mile. She stated they showed the tower would be able to co-locate an addition of three more service providers once the tower was completed. She said the proposed tower was 586' feet from nearest property line and the nearest structure was not on the property the tower would be located. She said the applicant has stated in the application that this tower would enhance service to their customers and E911 access for emergencies. She stated AT&T had been selected by First Net to build and manage America's first nationwide public safety broadband network dedicated to first responders. She stated this network covered all 50 states, 5 US territories, and the District of Columbia. She said the applicants have answered all of the proposed use questions in the Board Member packets. She stated they had also included a map showing there are no suitable tall structures or other communication towers, which they could co-locate within a one-mile radius of the proposed site. She stated the office did receive an email this morning of some objections and concerns, it is included in everyone's packet. She asked if they wanted her to read the email.

The Board agreed to make the email part of the record. (*on file*)

Mrs. Barnhill stated the application was in order.

The Chairman asked Robert Grant if he had anything to add to the staff report.

Robert Grant stated no, the staff report was substantially correct but he did have a few comments. He said there was much he could say however with the weather coming in it was his intention to be brief. He stated they had appeared before this Board on a number of occasions so the Board had already heard much of what they had to say about this technology generally. He said he would add that there were residences to the north that was 831'. He stated in respect to the comments and questions from an area resident, they were provided with that email earlier today and they had provided some responses; he wasn't sure what they had in front of them were the responses.

Attorney Doll stated they are included in the packets.

Robert Grant stated you do have the responses in the record as well. He said this was necessary public utility infrastructure. He stated it was critical to public safety and to public convenience. He said it would bring fixed wireless local loop to this area and provide service to an area that was currently unserved. He stated having said that he thought what he would prefer to do this evening was to open the floor for questions and then they could flush out any questions that the Board might have. He said one other thing, he had Mr. & Mrs. Forler with him. He said they are the owners and are available to answer any questions about their property that he may not know.

Chairman Valiant asked if there were any questions from the Board.

Terry Dayvolt stated you said that the closest residence was 850' away and what he was reading was the first closest was 300' and the second was 500'.

Robert Grant asked him what he was reading.

Attorney Doll stated that was the remonstrations.

Robert Grant stated that he was reading the wrong thing, if you would look at the drawings that was provided it was 831' to the nearest residence to the north. He said if you look at sheet number C-1.

Chairman Valiant asked if he said C or Z.

Robert Grant replied C as in cat. He stated what you were looking for sir was the set of drawings and there they were right there (pointing to the map). He said it was toward the back. He stated the pages were labeled down in the bottom right hand corner. He stated this drawing was prepared by their engineer and it shows the nearest residential structure to the north would be 831'. He said they had also double-checked that against google Earth and google Earth's measurement tool and it was consistent with the measurement tool.

Mike Moesner asked once the tower was up would it be available for other service providers to utilize the tower.

Robert Grant replied that it would be available for a minimum of three other carriers. He said AT&T would be at the top and at least three other carriers and sometimes more.

Terry Dayvolt stated he read on the remonstrations that they could see five or six other towers from that area.

Robert Grant replied that the nearest tower was over two miles away. He said they had prepared a power point presentation with a google Earth map showing the distance to that tower where they plotted it for the FCC tower registration co-ordinates, however Molly said they were a little understaffed this evening so they don't have the laptop to load the power point presentation. He said it was two miles to the north; actually, it was 2.1 or 2.2 miles. He said that was way outside the area where this facility must be located to close this gap in service.

Jeff Willis asked if he had read that there was a response that it was not going to be a lit tower.

Robert Grant replied there would be no lighting that was correct. He stated the tower was under 200' the FAA does not require lighting, so there would not be any lights.

Mike Moesner stated the tower itself was 200' but if it was on a hill that would put it at a higher elevation. He asked if that would make a difference or do, they go by the physical structure itself as far as lighting.

Robert Grant asked if he was talking about the FAA.

Mike Moesner replied yes.

Robert Grant stated the FAA had a general rule that anything under 200' did not require lighting.

Mike Moesner stated even if it was on a big hill.

Robert Grant replied the only exception to that was when it was near an airport or a flight path. He said in those rare circumstances a shorter tower might be required to be lit. He said all of that was for the safety compliance. He said this instance it was not required.

Terry Dayvolt said a document they gave us.

Attorney Doll asked what it was for the record.

Terry Dayvolt stated it was the Pike Legal.

Attorney Doll asked what the date of it was.

Terry Dayvolt stated it was filed December 28, 2018. He said number 19 said the prompt delivery of wireless E-911 calls to public safety organizations benefits the public by promoting safety of life and property. He asked if it would enhance 911, was that what he was reading in that paragraph.

Robert Grant replied let him look at the paragraph so he could answer his question specifically. He said the FCC has a publication out that said 70% of all E-911 emergency calls were made with a mobile device, number one. He stated number two, what the applicant was doing was participating in the First Net program, which was a program to bring enhanced E-911 emergency services to the area served by this tower. He said that was the general backdrop. He said without him going back and looking at that paragraph again.

Terry Dayvolt stated that was what he thought.

Robert Grant asked if that answered his question.

Terry Dayvolt replied it said there was a group of networks that relied on, which was further out reaching than Warrick County. He said maybe he was wrong.

Robert Grant stated the First Net network went way beyond Warrick County. He said this particular tower would serve this area of Warrick County. He stated they typically had a range roughly around three miles. He said as had talked about in prior meetings this technology had the name cellular from the early days with the network rather than telephone lines that were strung in linear fashion. He stated this network looked more like a honeycomb and they would overlap, overlap, and overlap with each other, which was where the strength came from, kind of like the links of a chain linking together. He said whenever you had a gap in service not only was the service poor there but it weakened the entire network. He stated when this was brought

in it would not only be enhanced and close gaps in service within this three mile radius around it, but all of the towers around it that it linked to it would strengthen their service as well. He said what they did would off load the load; they share the load if you would.

Terry Dayvolt asked so there was a gap in that area now.

Robert Grant replied yes, there was a gap in that area.

After ascertaining there were no other questions from the Board or remonstrators for or against the project he called for a motion.

I, Terry Dayvolt, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

In addition, the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.

7. Subject to an anti-climbing device and/or fence, be put up around tower.
8. Subject to no revolving beams of light or strobe lights.
9. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property. (pg. 35)

The motion was seconded by Doris Horn and carried unanimously.

Mrs. Barnhill told him the office would have his approval done by Wednesday. She asked him if he would like her to email it to him.

Robert Grant replied that would be terrific.

Mrs. Barnhill stated she would do that.

EXECUTIVE BUSINESS

None

ATTORNEY BUSINESS

Attorney Doll asked if the Board was aware that there had been a judicial review filed in regards to the approval of the American Land Holdings of Indiana LLC approval of the SU13 for mining, which the Board approved at the Special Meeting on November 13, 2018. He said it had been filed in Circuit Court. He stated they were in the preliminary stages. He said they had filed an answer and we've appeared on behalf of the Board. He stated American Land Holdings, which he would always refer to as Peabody, had their attorney involved in the case as well. He said Mr. Hendrickson had challenged the Board's decision and they were in the preliminary stages of yet another judicial review. He stated his advice was not to talk about this, not discuss

it, and to keep it confidential because they may choose to depose you. He said he had also been informed that a preliminary agreement had been reached by Liberty Mine, Alcoa, the City of Boonville, the homeowners organization adjacent to the mine site, and H & L Farms. He said they were working on the draft language of it now and it would be circulated. He stated they intended to file it with the lawsuit; Special Judge Held was presiding over first in the anticipated to present it at the February meeting for the Board's consideration.

Mike Moesner asked if that would be a regular meeting.

Attorney Doll replied yes, we refuse to keep setting Special Meetings.

Mike Winge made a motion to adjourn the meeting. The motion was seconded by Doris Horn and unanimously carried. The meeting adjourned at 6:27 pm.

Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held January 28, 2019.

Sherri Rector, Executive Director